

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Shua Tilahun,

plaintiff,

v.

**Oregon Department of corrections,
Sgt. Bernhardt, Cory Furey,
chaplain StollNecker, chaplain Thompson,
chaplain boreal, chaplain young,
Colette peters, Heidi Stewart, Jamie Bremen,
Mark Knuth, Brandon Kelly, Cindy Booth,
Nathaline frener, R polk, Kelly Carlson,
Toombs,**

defendants.

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Civil Action No. 6:23-cv-00060-AR

civil 1983 lawsuit

Jury trial demanded

I. Parties to this complaint

A. The defendant(s)

Provide the information below for each defendant named in complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name **OREGON DEPARTMENT OF CORRECTIONS,**

Defendant No. 2

Name Bernhardt
Job or title (if known) Sgt.
Employer ODOC
Address 2605 State Street
Salem OR 97310
☐ individual capacity ☐ official capacity

Defendant No. 3

Name Corey Fhuere
Job or title superintendent
Employer ODOC
Address OSP 2605 State Street
Salem Oregon 97310
☐ individual capacity ☐ official capacity

Defendant No. 4

Name Stallneker
Job or title chaplain services
Employer ODOC
Address OSP 2605 State Street
Salem Oregon 97310
☐ individual capacity ☐ official capacity

Defendant No. 5

Name Thompson
Job or title chaplain services
Employer ODOC
Address OSP 2605 State Street
Salem Oregon 97310

Defendant No. 6

Name boreeo
Job or title chaplain administration
Employer ODOC
Address 3723 Fairview industrial Park Southeast
Salem, OR 97302
☐ individual capacity ☐ official capacity

Defendant No. 7

Name young
Job or title chaplain administration
Employer ODOC
Address 3723 Fairview industrial Park Southeast
Salem, OR 97302
☐ individual capacity ☐ official capacity

Defendant No. 8

Name Colette peters
Job or title (if known) former director of ODOC
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 97302
☐ individual capacity ☐ official capacity

Defendant No. 9

Name Heidi Stewart
Job or title (if known)
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast

Salem, OR 9730

☐ individual capacity ☐ official capacity

Defendant No. 9

Name Jamie Breymen
Job or title (if known)
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name Mark Nooth
Job or title (if known)
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name Brandon Kelly
Job or title (if known) former superintendent of OSP
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name Cindy Booth
Job or title (if known)
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name Nathaline Frener
Job or title (if known)
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name R. Polk
Job or title (if known) law library coordinator
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name Kelly Carlson
Job or title (if known) law library coordinator
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

Name Mr. Toombs
Job or title (if known) lead mailroom worker
Employer Oregon Department of Corrections
Address 3723 Fairview industrial Park Southeast
Salem, OR 9730

☐ individual capacity ☐ official capacity

II. Basis for jurisdiction

Under 42 USC§ 1983, you may sue state or local officials for the "deprivation of any right, privileges, or immunities secured by the Constitution and [federal laws]." Under Bivens V. SIX unknown named agents of Federal Bureau of narcotics, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ state or local officials (a §1983)

III. prisoner status

Indicate whether you are a prisoner or other confined person as follows (check if apply):

☐ convicted and sentenced a prisoner

IV. Statement of claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and right short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. what date and approximate time did the events give rise to your claim(s) occur?

On or about 3-16-2022 Sgt. Bernhardt waited till I left the chow hall and called me to him. He told me to remove my religious head cover. I was confused by him directing me to remove it but I complied. He told me I'm not allowed to wear and that he didn't want to see me wear it again. I explained to them I was allowed to wear it. I told him that I had a religious service call out on 3-18-2022 and I would check with the chaplains to figure out what he's talking about because he told me that the chaplain Stallneker told him I wasn't allowed to wear it.

B. what date and approximate time did the events give rise to your claim(s) occur?

on or about 3-18-2022 I went up to my religious service and a few minutes before starting I spoke with chaplain Stallneker and explained what happened then I asked him what Sgt. Bernhardt was talking. Chaplain Stallneker told me he never sent Sgt. Bernhardt any emails saying couldn't wear religious head coverings in various colors, and he told me to leave his office and threatened to give me a DR for being in the office area asking him if what the Sgt. Said was true.

C. what date and approximate time did the events give rise to your claim(s) occur?

on or about 3-18-2022 after speaking with chaplain Stallneker I walked next door to chaplain Thompson's office asking her the same thing. She said she didn't know what I was talking about. I showed her religious head covering that was approved through security and provided to me by her, then I explained that if she receives an email from the Sgt. Or anyone else this is what they were talking this being the religious head covering.

Later on down the road before I had my DR hearing postponed she told me if I put my name on a list requesting a white Kofi/religious head covering she can make my DR go away. I refused to put my name on the list and walked away.

D. what date and approximate time did the events give rise to your claim(s) occur?

On or about 5 – 31 – 2022 I wasn't allowed to mail out my clemency because I'm indigent so I couldn't get indigent legal envelopes to mail out my clemency because for some reason mailing out my clemency this time didn't constitute legal mail unlike it did in the past.

E. what date and approximate time did the events give rise to your claim(s) occur?

On or about 1 – 17 – 2021 Ms. Polk refused to give me access to my law library flash drive or proof of my request receipt so as to attempt to subvert my ability to exhaust my due process.

F. what date and approximate time did the events give rise to your claim(s) occur?

On or about 3 – 17 – 2021 my legal mail was and is being opened and held and labeled as not legal mail by the mailroom. Including but not limited to mail coming in from the federal courthouse.

G. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

on or about 3-19-2022 at about 5:30 PM in the chow hall I approached the Sgt. To ensure he was aware that I spoke to both of the chaplains Stallneker, and Thompson. I explained to him that both of them had told me they didn't know what he was talking about and that I was going to continue to wear my religious head covering is in observance to my religion. He told me I couldn't wear it and that he didn't care what the chaplains had to say because he saying I can't wear. I explained to them that he doesn't determine what I can or can't wear or how I do or don't practice my religion. He told me I needed to take off my religious head covering. He said I'm telling you you need to take off your head covering. He said he doesn't care whether I am observing my religion are not I need to remove my religious head covering. I explained to him if he wants me to remove my religious head covering their needs documentation that he's telling me to stop observing my religious practices because of his opinion on how it should be done. I told him I will only remove it if he's going to give me a DR so there's documentation that he's telling me something so flagrantly out of line and unconstitutional. He smiled and said be more than happy to give you a DR I'm giving you direct order to remove your religious head covering. I asked him so you're going to give me a DR if I remove my religious head covering? He said yes I'll give you do your. So I removed my religious head covering walked off and waited for DR. The DR didn't come until after I filled out a grievance.

H. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

Between the time of 3-18-2022 and 5-9-2022 I sent kites to chaplain administration boreeo trying to address this issue and the fact that I received a DR for something that had already been established within the Department of Corrections is not being a problem and settled out of court in a previous case. I received no response despite the fact that I had explained that I was aware of multiple memos about the topic of religious headwear and the inconsistencies in the memos and the failure to observe the rights of inmates.

I. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

Between the time of 3-18-2022 and 5-9-2022 I sent kites to chaplain administration young trying to address this issue and the fact that I received a DR for something that had already been established within the Department of Corrections is not being a problem and settled out of court in a previous case. I received no response despite the fact that I had explained that I was aware of multiple memos about the topic of religious headwear and the inconsistencies in the memos and the failure to observe the rights of inmates.

J. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

Between the time of 3-16-2022 and 5-9-2022 the superintendent Corey Fhuere could have and should have intervened and clarified that various color religious head coverings are in no way shape or form a security issue, and the inmates are to be left alone about wearing them. Furthermore the superintendent Corey Fhuere had a responsibility to ensure compliance with past out-of-court settlements between inmates and ODOC are upheld and complied with. His malfeasance has resulted in my harassment and persecution of my religious observance.

K. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

ODOC's malfeasance to comply with past out-of-court settlements has resulted in my harassment, and reduced observance of my religious practices.

L. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

I approached the law library front desk and explained that I was indigent and attempted to procure indigent envelopes and indigent copies so I can mail out my clemency as I had done in the past expecting that it would be charged to my inmate trust account as is the normal procedure for indigent envelopes and copies. However the law library coordinator Ms. Polk decided to refuse to allow me copies and engine envelopes preventing me from attempting to secure an opportunity for clemency as I have done in the past.

M. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

While I was in segregation I requested access to my law library flash drive pursuant to the OAR's that a lot for law library coordinator Ms. Polk not only refused to provide me with my Access to my flash drive she also refused to provide me with the legal mail request receipt so as to attempt to ensure that I would have the ability to prove that my constitutional rights are being flagrantly violated.

N. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

On or about I was sitting down on my bed waiting for mail when I received open legal mail from the federal courthouse that had been clearly held based on the postmark date and opened prior to me receiving it with a label that stated it wasn't legal mail.

O. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

On or about 11 -8-2021 my legal file and motions erased from my laptop by the law library coordinator.

P. What are the facts underlining your claim(s)? (For example: what happened to you? Who did what? Was anyone else involved? Who all saw what happened?)

On or about 9 - 6 - 2022 at about 3:06 PM I received mail postmarked September 1, 2022 the mail was legal mail

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claim for the acts alleged. Explain the basis for these claims.

- 1) I am seeking punitive damages of \$250,000. ODOC has already reached at least two out-of-court settlements for the same general issue. One settlement was for 40,000 and the other settlement was for 50,000 related to religious headgear. Part of the settlement was an agreement to not harass inmates or their visitors related to their religious attire.

- 2) I am also asking that the correctional staff leave me alone about the color of my Kofi's/religious hat's.
- 3) I want the mailroom to stop opening my legal mail.
- 4) And I want the mailroom to stop holding my legal mail including but not limited to preventing it from being sent out of the institution.

VII. exhaustion of administrative remedies administrative procedures

The prison litigation Reform Act ("PLRA"), 42 USC 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other federal law, by a person confined in any jail, prison, or other correctional facility unless such administrative remedies as are available are exhausted."

A. did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes.

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

I was at the Oregon State penitentiary located at 2605 State Street Salem, OR 97310.

B.

Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes.

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes.

If yes, which claim(s)?

My grievance covers the claims but it only has a maximum of 12 lines to voice your grievance.
I also have a neurological disability that limits my ability to hand write the grievance.

D. did you file a grievance in the jail, prison or other correctional facility where your claims arose concerning the facts relating to your complaint?

Yes

If you did file a grievance:

1. Where did you file the grievance?

Oregon State penitentiary 2605 State Street Salem Oregon 97310

2. What did you claim in your grievance?

I explained for the second time in less than one week I was given a direct order to remove my Kofi/religious hat or head cover because the Sgt. Doesn't like my yellow Kofi in public.

Even with the limited space in the grievance process I went on to explain some of what he had told me such as the only color we were allowed to wear was white despite the fact no other Muslims were being prevented from wearing any of the other colored Kofi's. I went on to explain all the different colors being worn such as black, white, gray, blue, brown. Then I went on to explain that they were provided to us by the Department of Corrections vendors and chapel services. I explained that this has not been a problem for several years the only reason he claimed he was messing with me was as a result of an email that he said the only color I could wear was a white one.

My requested resolution in the grievance was very simple I just asked that I be left alone about the color of my Kofi/religious hat.

I explained it's the law library coordinator's job to make sure legal kites are delivered and responded to in a timely manner. I explained in another grievance that I couldn't get indigent legal envelopes and copies because according to the law library indigent inmates can send out clemency petitions. In a separate grievance I went on to explain in accordance with other OAR's I was allowed to have access to my flash drive. Then last but not least when I grieved the mailroom I went on to explain that my mail being opened and held and labeled not legal, the simple solution asking them to stop messing with my legal mail.

3. What was the result, if any?

Even after acknowledging when I spoke to the grievance coordinator in passing about my grievance that the grievance coordinator had seen multiple conflicting memos and emails he decided to dismiss my grievance claiming:

My grievance has not demonstrated how it qualifies under OAR 291-109-0210 for this issue to be grieved. It was a standard response claiming the grievance did not demonstrate misapplication of departmental policy, rule, or directives, unprofessional actions of department employees, volunteers, or contractors, etc. etc.

All the other grievances were the standard excuses justifying actions or just outright denying everything.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I filled out a grievance appeal explaining if ODOC makes a mistake in the grievance appeal process and incorrectly denied a grievance is my responsibility to point it out to give ODOC a chance to remedy the problem.

The grievance officer decided he was still going to deny the grievance.

Where is all the other grievances were the same standard failure to take responsibility for their actions.

So for purposes of full exhaustion in accordance with The prison litigation Reform Act ("PLRA"), 42 USC 1997e(a)

I filled out another appeals attempting to give ODOC every opportunity to remedy the issue rather than summarily dismissing the grievance. I even spoke face-to-face with the grievance coordinator and wrote him a kite explaining my intent was to fully exhaust the grievance process to no avail.

I went out of my way to fully exhaust my administrative process pursuant to the prison litigation Reform Act ("PLRA"), 42 USC 1997e(a)

Q. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

- 1) I requested copies of various memos being passed around by the chaplain clerk in Islamic services printed by chaplain Thompson that conflicted with the narrative that was being perpetuated.
- 2) The chaplain clerk told me I couldn't have a copy of the memos.
- 3) I spoke face-to-face with the hearings officer in advance pointing out how insane it is that I would get a disciplinary right up wearing my religious head covering because of the color, and because the correctional officer claimed that I could try to escape with it.
- 4) I spoke with my counselor about this offensive and egregious deprivation of my First Amendment right.

- 5) I wrote kites to all parties involved to no avail.
- 6) I even sent a letter to the department of public safety standards and training attempting to address this issue. Once again to know avail.
- 7) I tried talking face-to-face when they pick up the mail on the control floor.
- 8) I tried talking to Ms. Polk about mailing out my clemency and how this had never been a problem before.
- 9) I asked correctional officers to sign the envelopes when they were delivered reopened.

(Note: you may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous lawsuits

The “three strike rule” bars a prisoner from bringing a civil action or any appeal in federal court without pain the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or false to state a claim upon which relief may be granted unless the prisoner went danger of serious physical injury.” 28 U.S.C. § 1915 (g).

To the best of my knowledge, have you had a case dismissed based on this “three strike rule”?

yes

If yes, state which dismissed her case when this occurred, and attach a copy of the order if possible.

The lawsuit was dismissed because I owed money to the federal courts for previous suits. It was paid with the stimulus checks.

A. have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

No

IX. Certification and closing

Under Federal Rules of Civil Procedure 11, by signing below, I certify to the best of my knowledge information and belief that this complaint: (1)is not being presented for an improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have eventually supported or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and 4 complaint otherwise complies with the requirements of rule 11.

A. four parties without an attorney

I agree to provide the clerk's office any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the clerk's office may result in the dismissal of my case.

Date of signing: 12-22-22

Signature of plaintiff 

Printed name of plaintiff Shua Tilahun

Prison identification # 15493938

Prison address OSP 2605 State Street Salem, OR 97310

Dated this 22 day of December 2022.

Respectfully Submitted,

Shua Tilahun
Shua

(Signature)

Print Name: Shua Tilahun Pro Se'

SID #: 15493938

OSP2605 State Street

Salem, OR 97310